



November 30, 1999

Ms. Bernadette Gonzalez  
Staff Attorney  
Fort Bend Independent School District  
16431 Lexington Blvd.  
Sugar Land, Texas 77479

OR99-3431

Dear Ms. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129758.

The Fort Bend Independent School District (the "district") received a request for test results and profiles related to student testing for the district's gifted and talented program. You assert that the information is excepted from disclosure "under the student records exception to the Texas Government Code[.]" Although you do not specifically identify applicable exceptions, we surmise that you seek to withhold the submitted documents pursuant to sections 552.026 and 552.114 of the Government Code.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Act of May November 30, 1999 (to be codified as an amendment to Gov't Code § 552.301(e)). You did not, however, submit to this office a copy of the written request for information.

disclosure under section 552.101 as information made confidential by law.<sup>1</sup> The documents submitted to our office appears to have had been sufficiently redacted to eliminate from disclosure confidential information.

Finally, you indicate that the district has released to the requestor redacted copies of documents that are similar to those now submitted to this office. You ask whether the district has the obligation to continue to release the information it feels it released in error. If the documents were redacted in conformity with the requirements of FERPA, the district has not improperly released confidential information. However, if the district released information which is confidential pursuant to FERPA, the district must not continue to release such confidential information. *See* Gov't Code § 552.352.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/nc

Ref: ID# 129758

Encl. Submitted documents

cc: Mr. W. Terry Osterloh  
3803 Snead Court  
Sugarland, Texas 77479  
(w/o enclosures)

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<sup>1</sup>Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 21, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to Gov't Code § 552.302). Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You claim that the information is excepted from disclosure pursuant to sections 552.026 and 552.114 of the Government Code. Sections 552.026 and 552.114 provide compelling reasons sufficient to overcome the presumption that the information is public.

Section 552.114(a) of the Government Code requires that the district withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Further, section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

For purposes of FERPA, the test records at issue constitute "education records" in that they contain information directly related to students and are maintained by the district. FERPA does not protect information other than "personally identifiable information in educational records." Open Records Decision No. 634 at 4 (1985) (citing 20 U.S.C. § 1232g(b)(2)). Therefore, we believe that the district must release to the requestor copies of the test results and profiles, deleting information to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). This identifying information is deemed confidential under FERPA and must be withheld from